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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/674,759

09/30/2003

Nathanael F. Ehrich

RSW920030072US1

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43168 7590 05/30/2008
MARCIA L. DOUBET LAW FIRM
PO BOX 422859
KISSIMMEE, FL 34742

EXAMINER

BARQADLE, YASIN M

ART UNIT

PAPER NUMBER

2153

NOTIFICATION DATE

DELIVERY MODE

05/30/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mld@mindspring.com

Office Action Summary	Application No. 10/674,759	Applicant(s) EHRICH ET AL.	
	Examiner YASIN M. BARQADLE	Art Unit 2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/25/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the pre-appeal Brief request for review filed on 01/29/08, PROSECUTION IS HEREBY REOPENED. News ground of rejections set forth below.

- Claim 3 has been canceled.
- Claims 1-2, and 4-12 are presented for examination.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

A question of patentability is raised with respect to claims 1-2, and 4-12 of the instant application under the judicially created doctrine of "obviousness-type" double patenting with respect to claims 1,4 and 7 of U.S. Patent No. 7,308,649.

Claims 1,6,10, and 12 of the instant application are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,4 and 7 of U.S. Patent No. 7,308,649. Although the conflicting claims are not identical, they are not patentably distinct from each other because a comparison between instant application independent claims 1,6,10, and 12 and the claims 1,4 and 7 of the patented claims reveal the patented claims are simply species of the broader claims of the instant application. Hence, claims 1,6,10, and 12 of the instant application are generic to the species of the invention covered by claims 1,4 and 7 of the patented

claims. Thus, the broad generic invention is anticipated by the narrower of the species of the patented invention, thus without a terminal disclaimer, the species claims preclude issuance of the generic application. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

Furthermore, a question of patentability is raised with respect to claims 1-2, and 4-12 of the instant application under the judicially created doctrine of “obviousness-type” double patenting with respect to claim 1 of co-pending application 10,675,418.

Claims 1,6,10, and 12 of the instant application are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of co-pending application 10,675,418.

Although the conflicting claims are not identical, they are not patentably distinct from each other because a comparison between instant application independent claims 1,6,10, and 12 and the claim 1 of the co-pending application 10,675,418 reveal the co-pending application claims are simply species of the broader claims of the instant application. Hence, claims 1,6,10, and 12 of the instant application are generic to the species of the invention covered by claims 1,4 and 7 of the co-pending application claims. Thus, the broad generic invention is anticipated by the narrower of the species of the patented invention, thus without a terminal disclaimer, the

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species claims preclude issuance of the generic application. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-5 and 10-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Narin, US (7,159,182).

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As per claim 1, 4 and 12 Narin teaches a method and a computer program product for providing autonomic content load balancing (fig. 1 and steps in fig.

2. See abstract), comprising steps of:

defining a plurality of alternative versions of content a Web page to be served, along with values of one or more conditions under which each of the alternative versions should be selected (col. 7, lines 21-44 and col. 10, 8-28);

receiving a request for the Web page (col. 9, lines 6-40);

determining current values of the conditions (col. 7, lines 21-44);

using the determined current values to select one of the alternative versions (col. 9, lines 6-40 and col. 10, lines 8-28); and

serving the selected version of the Web page, responsive to the request (col. 7, lines 21-44 and col. 10, lines 8—28).

Narin further teaches where a content forms a portion of a particular web page and storing the selected versions as the content for the portions of the web page (col. 9, lines 6-40 and col. 11, lines 4—51).

As per claim 2, Narin teaches the method according to Claim 1, wherein each of the alternative versions comprises the Web page represented using a different media type (col. 7, lines 21-44 and col. 10, lines 8—28).

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As per claim 5, Narin teaches the method according to Claim 1, wherein the conditions pertain to at least one of system conditions and network system/network conditions (col. 7, lines 24-32 and col. 10, lines 8—28).

As to claim 10, this is a computer-implemented system with similar limitations as in claims 1 and 12 above. Therefore, it is rejected with the same rationale.

Narin further teaches a processor and memory storing instructions (see figures 5 and 10), Narin also teaches a content comprising at least two different portion, each of which has associated therewith a plurality of alternative versions and at least one condition (col. 9, lines 6-40 and col. 11, lines 3-51. see fig. 8a-8c).

As per claim 11, Narin teaches the system according to Claim 10, wherein the instructions configured to determine comprises comprise instructions configured to obtain measurements collected by an agent (col. 9, lines 6-40 and col. 11, line 52-65).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole

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would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Narin US (7,159,182) in view of Leblang et al (US5649200), hereinafter "Leblang".

As per claim 6-9, Narin teaches a method of using dynamically selectable content versions (fig. 5 and fig. 10), comprising steps of:

receiving a request for content having selectable versions (col. 9, lines 6-40);

identifying at least one or more conditions condition associated with the selectable versions (col. 7, lines 21-44 and col. 10, 8-28);

determining a current values of value for each of the at least one identified conditions (col. 7, lines 21-44);

using the determined current value for each of the at least one identified conditions to select (col. 9, lines 6-40 and col. 10, lines 8-28);

a web page with at least two different portion, each of which has associated therewith a plurality of alternative selectable versions (col. 9, lines 6-40 and col. 11, lines 3-51. see fig. 8a-8c).

using the selectable version of the content which is stored at the selected path using the determined current values to select from among the selectable

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versions to create a response to the request (col. 6, lines 2-16 and col. 11, lines 3-51).

Although Narin shows substantial features of the claimed invention as explained above, Narin does not explicitly show a directory structure location associated with the content.

Nonetheless, this feature is well known in the art and would have been an obvious modification of the system disclosed by Narin, as evidenced by Leblang USPN. (5649200).

In analogous art, Leblang whose invention is about dynamic rule based version control system; disclose a directory structure location associated with the content. [Figures 18-19 and col. 27, lines 4-31]. Giving the teaching of Leblang, a person of ordinary skill in the art would have readily recognized the desirability and the advantage of modifying Narin by employing the system of Leblang so that files are organized in hierarchical data structure that are easily accessible and recognizable by their names or versions in the directory structure.

Leblang further teaches select a path within the directory structure location (col. 27, lines 4-31 and abstract).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yasin Barqadle whose telephone number is 571-272-3947. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Burgess can be reached on 571-272-3949. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or public PAIR system. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Yasin M Barqadle/

Primary Examiner, Art Unit 2153